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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 430.

IN THE MATTER

OF

The Petition of SPENCER KELLOGG & SONS, INC., as owner of the Motorboat "LINSEED KING," her engines, etc., for Limitation of Liability, Civil and Maritime.

SPENCER KELLOGG & SONS, INC.,
Petitioner,

HILDA M. HICKS, as Administratrix, and others,
Claimants-Respondents.

BRIEF FOR CLAIMANT-RESPONDENT HILDA HICKS, ADMINISTRATRIX.

Statement.

Hilda Hicks is the widow and administratrix of David Hicks, who was drowned in the *Linseed King* disaster. The Hicks claim is typical of some forty-three other claims in this proceeding. They have been hitherto styled the

claims of the "Saturday" men, to indicate that they applied on Saturday, December 18, 1926, in answer to the petitioner's advertisement in a New York daily newspaper for longshoremen. No suit was brought at any time in any state court on this Hicks claim; it got into the admiralty court as a result of the monition, and the filing of an answer denying the right to limit liability, etc. (R. 41). The Hicks claim has been successful in both courts, in common with the rest of the claims involving these "Saturday" men. They have had no part in either of the cross-petitions for certiorari to this court.

The District Court considered and discussed their rights in the opinion (R. 197, 205, 225), holding that they were at no time more than mere applicants for employment, and had never been hired, and had never become employees: or, if employees, they were nevertheless maritime employees. It made findings of fact in that behalf (R. 230-232). The Circuit Court of Appeals unanimously upheld these findings (R. 2370).

Trial of the limitation proceeding was had before Hon. John R. Hazel, D. J. He heard some 119 witnesses at a trial lasting three weeks. He found negligence and decreed liability and refused to limit liability, in consequence of his finding that the petitioner had not sustained the burden of proving the absence on its part of privity and knowledge.

The unanimous Circuit Court of Appeals, Second Circuit, with an opinion by Learned Hand, C. J. (R. 2365), affirmed both the decree refusing limitation, and likewise the disposition made of all claims by the Hon. Robert P. Patterson, D. J. (R. 2376), among them the claim of Mrs. Hicks, as administratrix, which was held to be properly in admiralty. The claims of Hicks and the "Saturday" men were not referred to the New Jersey Workmen's Compensation Board by the courts below. Hicks was a resident of the State of New York; so was and is his administratrix, the claimant.

POINT I.

Gross negligence and liability on the part of the petitioner were clearly proved in this proceeding, as both of the courts below found.

The principal factors found by the District Court to be responsible for the catastrophe were, 1) impact with floating ice in the Hudson River, 2) overcrowding of the small launch, by reason whereof most of those carried were prevented from escaping from the enclosed cabin, 3) that the launch was undermanned, by reason of which the overcrowding was made possible.

It was found by the courts below (R. 2366) that on the fatal voyage no less than seventy-eight men were crowded in the cabin of this small launch. The petitioner contends that there was sufficient space in the cabin for this number of men, but this proposition was found against him by the District Court (R. 136), and the language of the Circuit Court of Appeals would clearly indicate that it was of the same opinion (R. 2369). In fact, it was found that such overcrowding was the rule and not the exception, with respect to this boat (R. 137), whenever extra men were advertised for to unload a seed ship.

It was also found that the boat was not constructed to withstand floating ice (R. 131, 133), and that in previous years the petitioner had customarily discontinued its use during the winter months in New York City, recognizing the dangers attendant upon using it at that time (R. 131). It was also found that weather conditions in the lower part of the Hudson River on and shortly prior to December 20th were such that the presence of floating ice at this point should have been expected (R. 131-132), and precautions should have been taken against the use of the boat at that time for ferrying a large number of men. This was also found as a fact by both courts (R. 137, 141, 2369).

The presence of ice in this part of the Hudson River prior to the date of the disaster was the subject of some conflict in the testimony, but both courts were satisfied with the finding it was there (R. 130, 2366).

Frederick Lang, a relief operator of the launch, who had taken it across the river on the day previous to the accident, had observed floating ice, but had neglected to report it to his superiors (R. 130, 1957).

The fatal trip from the New York pier was commenced in darkness (R. 335), at 6.30 A. M., almost an hour before sunrise, which was at 7.25 A. M. (Claimants' Exhibit F, R. 2342). Rohweder, the launch captain, had seen floating ice on his trip that morning from New Jersey to New York (R. 373) to pick up this load of men, but nevertheless braved the ice conditions, loaded the boat with some seventy-eight men, and started back to New Jersey. In the actual loading of the boat, Rohweder took no active part. His main concern was to hold the launch securely alongside the landing stage, which he did by turning the engine over; heading the vessel against the tide (R. 396). His only assistant during the loading was a man named Roberts, a chauffeur at the petitioner's plant. Being known as a fellow employee, and not part of the boat's crew, Roberts as a practical matter could exert no effective control to prevent those who boarded the boat from overloading it (R. 393, 394).

The Virginia, 264 Fed. 986, at p. 989; aff'd 278 Fed. 877; cert. denied, 257 U. S. 659.

The petitioner urges that Rohweder was competent; that the plant manager at Edgewater, a Mr. Stover, who had supervision over the entire plant and this launch as well, had instructed Rohweder not to run the boat when there was ice in the river; that having picked a competent man, and having thus instructed him, that was the be-all and end-all of the petitioner's duty; and that it could in no way be regarded or found to be negligent.

Both of the courts below disagreed with the petitioner's view of the matter, and it would seem that both the courts below correctly followed the rules consistently announced by this court.

The Germanic, 196 U. S. 589, 595, was a case involving the loss of cargo, and involving the construction of the "Harter Act" (Act Feb. 13, 1893, Chap. 105; 27 Stat. 445, U. S. Code Tit. 46, Secs. 190-195). It is significant here only because this court declares a cardinal principle of the law of negligence, which must not be lost sight of. The court declared that the standard by which to judge negligence was an "external" standard, which did not immunize the principal by reason of the mere expert qualifications of the man whose act or omission or whose faulty judgment caused the injury. At page 595 of the opinion it is said:

> "With reference to a part of the argument we think it proper to say a word. It is quite true that negligence must be determined upon the facts as they appeared at the time and not by a judgment from actual consequences which then were not to be apprehended by a prudent and competent man. This principle nowhere has been more fully recognized than by this court. Lawrence v. Minturn, 17 How. 100, 110; The Star of Hope, 9 Wall. 203. *But it is a mistake to say, as the petitioner does, that if a man on the spot, even an expert, does what his judgment approves, he cannot be found negligent. The standard of conduct, whether left to the jury or laid down by the court, is an external standard, and takes no account of the personal equation of the man concerned. The notion that it 'should be coextensive with the judgment of each individual' was exploded, if it needed exploding, by Chief Justice Tindal, in Vaughan* v. *Menlove,* 3 Bing. N. C. 468, 475. *And since then, at least, there should have been no doubt about the law. Commonwealth* v. *Pierce,* 138 Massachusetts 165, 176. *Pollock, Torts,* 7th ed., 432." (Italics ours.)

In the "Arizona Employers' Liability Cases," 250 U. S. 400, 432, in a concurring opinion of Holmes, J., with whom Brandeis and Clarke, JJ., joined, it was said:

> "A man employs a servant at the peril of what that servant may do in the course of his employment and there is nothing in the Constitution to limit the principle to that instance (citing many cases). There are cases in which even the criminal law requires a man to know facts at his peril. Indeed, the criterion which is thought to be free from constitutional objection, the criterion of fault, is the application of an external standard, the conduct of a prudent man in the known circumstances, that is, in doubtful cases, the opinion of the jury, which the defendant has to satisfy at his peril and which he may miss after giving the matter his best thought (citing cases). Without further amplification so much may be taken to be established by the decisions (citing cases)."

In the case at bar, the courts below rightly held that the risk of ice contact was necessarily very great under all the conditions likely to be encountered at the time of the year that the accident happened; that this danger being forseeable was easily preventable; and that the degree of care required under the circumstances was commensurate with the risk.

We submit that the facts are quite conclusively found in this case. Although the questions submitted to this court by the boat owner in its petition for certiorari are framed as propositions of law, yet under cover of them, the petitioner in his main brief attacks almost every finding of fact made below. An example is the suggestion in the footnote at page 5 of the petitioner's main brief in No. 430 that both the District and Circuit Court of Appeals misunderstood the construction of the windows in the enclosed cabin of the launch, although it is evident from the record that this question was elaborately considered at the trial. Then, petitioner cannot quite acquiesce in the findings of the courts below that this boat was not fit for operation amid floating ice, for its brief (p. 8, bottom) argues:

"* * * It appears to be established by uncontradicted evidence that the 'Linseed King' could be navigated safely through broken ice, provided * * *."

And then follow the "provisos," which are:

1) she proceeded slowly and

2) carefully and

3) provided the ice was *not too heavy.*

POINT II.

Both the courts below found and correctly decided on the proofs made that the petitioner had failed to sustain the burden of showing such absence of privity or knowledge as would entitle it to limitation of liability.

The petitioner here does not seriously contest liability, but argues in this court that the lower courts were wrong in denying to it limitation of liability.

The petitioner's principal reliance is upon the argument that it hired a competent man, Rohweder, and gave him explicit instructions not to run the boat through ice, and secondly, upon the supposed analogy of the facts of this case to those in the celebrated case of *La Bourgogne,* 210 U. S. 95. Again, a passage from the opinion in the case at bar of the Circuit Court of Appeals is quoted at page 30 in petitioner's brief (in No. 430), in an effort to predicate error by urging at page 31 that that court attempted to lay down a novel and unreasonable rule which the briefer construes as requiring in every case the petitioner's plant manager, Mr. Stover, to accompany the boat on its trip at the peril of having limitation denied. Unfortunately, the omission from the passage quoted at page 30 of petitioner's brief of a portion where asterisks are placed has obscured the evident meaning of the opin-

ion. Reading the whole text of the opinion without deletion will show that no new or unreasonable rule was intended to be laid down by the Circuit Court of Appeals. The court makes the suggestion that Stover should have realized the extreme danger; should have known of the ice fluctuations due to wind, current and tide; and should have ascertained from easily accessible sources by telephone or otherwise the presence or absence of ice in that region before the trip started, or, if that failed, should have provided for finding by personal inquiry, if need be, the condition of the river in respect to ice. The evident idea of the court was that Stover could not sit supinely by and take chances, but that if he did not make an effort to obtain information of ice conditions in the river from others, he should have been on the spot himself to investigate conditions so long as he, Stover, kept the boat in use during this dangerous season instead of laying it up till the spring. In other words, the hiring of Rohweder did not sanction Stover becoming a figurehead, was all that was meant.

Nevertheless, it seems to be urged that Rohweder was competent, and he disobeyed instructions, thus exonerating the petitioner. The fallacy of the argument is seen in this: petitioner might urge that it hired a competent captain, positively instructed him never to pass a vessel that he was overtaking in the channel unless on its starboard hand; and, if he disobeyed, and a collision ensued, urge that such disobedience taken in conjunction with his competence entitled petitioner to limitation of liability. Such an argument would, of course, be absurd.

The supposed analogy of this case to that of *La Bourgogne, supra,* is non-existent. The latter related to collision in fog upon the high seas, where in the nature of things the conduct of the captain must be governed by many conditions which the managing heads of the company, perhaps many thousands of miles away, could not be responsible for, and which must be left to the captain's discretion. It is a matter of common knowledge to mariners that the large size of the ocean, and the universal

use of the fog whistle required by the international rules (made obligatory by statute everywhere), and the fact that excessively slow speed will diminish steerageway to such a degree as to hinder manoeuvering to avoid a collision are all practical considerations of weight in the premises. Besides, no matter how slowly ship A may be proceeding in a fog, this may not prevent a collision if ship B is proceeding at a very rapid speed—all these factors combined were no doubt considered by the court in disposing of the *La Bourgogne* case.

This court never meant that caution could be thrown to the winds, or that a premium could be put upon carelessness, but it did mean that where it is both possible and feasible to require the managing heads of the corporation to use a high degree of care, that will be exacted. The shipowner can in no event *delegate* the duty to see that at the *inception* of the voyage a seaworthy vessel is sent out, i. e., one that is fit for the service to be performed, and is neither overloaded nor undermanned.

> *Christopher* v. *Grueby* (C. C. A., 1st), 40 Fed. (2nd) 8, 12, and cases cited.

The law is concerned with preventing disasters, not with winking at violations or omissions which may cause them. Stover's being on the job might and very likely would have averted the disaster, for it would have made for obedience to the order not to pass through floating ice. But it is not a fair summary of the opinion to say that this obvious suggestion by the court amounts to laying down an inflexible rule that Stover must accompany the boat under pain of limitation being denied.

This court has often held, however, that the question of presence or absence of "privity or knowledge" in this connection is primarily a question of fact, and the concurrent findings of the courts below on this point will be accepted:

> "As both courts held that there was no privity or knowledge, and as that question is primarily one

> of fact the rule which we have hitherto applied as to the effect to be given to the concurrent findings of fact made by two courts might well be adequate to dispose of this subject."
>
> *La Bourgogne,* 210 U. S. 95, 117.

After heeding the importunities of the parties who had filed cross-petitions for certiorari, the court went on to say, after considering the facts,

> "that the findings of the courts below were clearly right."

In *Piedmont Coal Co.* v. *Seaboard Fisheries Co.,* 254 U. S. 1, at page 13, it is said:

> "The concurrent findings of fact by the lower courts, which we accept (Baker v. Schofield, 243 U. S. 114, 118; La Bourgogne, 210 U. S. 95, 114; The Germanic, 196 U. S. 589, 595), are to the contrary."

In *The Germanic,* 196 U. S. 589, 595, the unanimous court say:

> "The petitioner argues that the danger could not have been foreseen and that there was no negligence, attributing the loss to an unusual gale and special circumstances. But the District Court and the Circuit Court of Appeals agree that the loss was due to hurried and imprudent loading, which brought the center of gravity of the ship five or six inches above the metacenter. As usual, we accept their finding. The Iroquois, 194 U. S. 240, 247; The Carib Prince, 170 U. S. 655, 658. We see no sufficient reason to doubt that it was correct."

This was not the case of a stout vessel, made ready for a voyage that will take her into distant seas and expose her to unknown perils. In such an undertaking the conduct of the voyage must then be left to the master, and the managing heads cannot be on the spot to supervise, and so are not chargeable with knowledge and privity.

The situation here is vastly different. We have a small boat used as a private ferry across a navigable river about one and one-half miles wide. The boat owners are in the business of linseed oil manufacturing, and no distant voyage is contemplated and the boat is used as an adjunct of the linseed oil plant. Operation is under the eyes of the plant manager, who is responsible for its safe operation. The trier of the facts has found that Stover the plant manager, had knowledge of habitual overloading of the launch at times when applicants for employment were ferried to Edgewater (R. 137).

In *In Re Eastern Transp. Co.—"The Calvert"* (D. Ct., D. Md., 1929), 37 Fed. (2nd) 355, 363 (modified, 51 Fed. [2nd] 494, but not as to the portion here quoted), it is said:

> "The word 'privity' of the owner, as used in the statute, means some fault or neglect in which the owner personally participates. The word 'knowledge,' as used, means some personal cognizance, or means of knowledge, of which the owner is bound to avail himself, of a contemplated loss, or of a condition of things likely to produce or contribute to a loss, without adopting appropriate means to prevent it. *Lord* v. *Goodall, etc., S. S. Co.*, 15 Fed. Cas. 884, No. 8506; id. 102 U. S. 541. Mere negligence does not necessarily establish existence on the part of the owner of 'privity or knowledge.' *La Bourgogne*, 210 U. S. 95; *The Virginia* (D. C.), 264 F. 986; id. (C. C. A.) 278 F. 877. When the owner is a corporation, the privity or knowledge must be that of the managing officers of the corporation. *Craig* v. *Continental Insurance Co.*, 141 U. S. 638. That is to say, corporations are chargeable with knowledge of the existence of defects, or become privy to acts of negligence causing the same, only when persons representing the corporations in such capacities as to speak for it are guilty of some negligence or omission to maintain the vessel in a seaworthy condition. *Pocomoke Guano Co.* v. *Eastern Transportation Co.* (C. C. A.), 285 Fed. 7."

Data on ice conditions in New York Harbor was readily at hand and procurable by merely telephoning to local

towing or lighterage companies, or to the harbor police. It being late in December, ice was reasonably to be expected. The launch was found to have been overcrowded on previous occasions. Stover, the plant manager, and not Rohweder, had the responsibility of deciding when the boat should be removed from service and laid up on account of ice conditions (R. 133, 1915).

That knowledge and privity may exist sufficient to defeat an exemption or a limitation of liability, where a short sea voyage or ferry trip has been embarked on in the face of known or forseeable perils, although a contrary result might follow if the same condition arose during the course of a long voyage, is the effect of a body of well-considered precedents approved by the court.

Texas & Gulf S. S. Co. v. *Parker,* 263 Fed. 864, cert. denied, 253 U. S. 488.

The Virginia (*Hines* v. *Butler*), 264 Fed. 986, aff'd 278 Fed. 877, 880, cert. denied, 257 U. S. 659.

The Southwark, 191 U. S. 1, 8, 9.

The Jean Bart, 197 Fed. 1002, 1003, 1004.

POINT III.

Hicks and the "Saturday" men were not employees of the petitioner, under the concurrent findings of both the District and Circuit Court of Appeals.

Failing in its attempt to establish the right to limitation of liability against this claimant who came into admiralty in response to the monition, the petitioner next attempts to have the claimant cast out of the admiralty court and remitted to the New Jersey Workmen's Compensation Board.

The respondent Hicks, in common with the "Saturday" men, have thus far successfully resisted such removal because the courts below have concurrently held that he

never became an employee of the petitioner—had never gotten beyond the status of a mere seeker after employment; whence such claimants as Hicks had no concern with the New Jersey Workmen's Compensation statute.

To be sure, they (Hicks and the other "Saturday" men) answered an advertisement on the 18th day of December, 1926, and were told to return on the following day, and, returning then, were again sent away empty-handed and told to return on the 20th (the day of the disaster). They never did a stroke of work and never earned or received any pay. The seed ship they were to unload had not arrived until the afternoon of the 19th, but that on the 20th these men would, it is said, immediately on their arrival have been put to work unloading it—a maritime employment. They had on the earlier day been given cards said to be the stub of a time card, but it is undisputed that they never punched a time clock and never earned a penny of pay. One reason for the card may have been to attest their privilege to board the launch, and secondly, as a means of identification so as to prevent sabotage at the plant. The Circuit Court of Appeals considered the purpose of the card was to give preferences among the holders when the jobs were available (R. 2370), but that no definite hiring had been accomplished of these "Saturday" men before the disaster happened. The petitioner argues in its brief (p. 48) that each of these "Saturday" men, from the moment of receiving this card, became a full-fledged employee, entitled to an action against the petitioner if denied employment upon arrival at the plant on Monday morning, the date when the accident occurred. This is somewhat fantastic. There was nothing certain about the job so far as Hicks, or any other individual among these "Saturday" men was concerned. Had they arrived at the plant en masse, and had the foreman decided he could get along with forty men, it is certain that the forty-first, which might have been Hicks, would have been sent away for the third successive time empty-handed. There was nothing approximating a definite hiring until such a man punched the time clock and was put to work.

This never materialized. It is conceded at page 47 of the petitioner's brief in No. 430 that this work was contingent upon the arrival of the seed ship *Tercero*. Had this ship been deflected to another port before its arrival in New York, it is certain that none of the "Saturday" men would have had any rights whatsoever to look to the petitioner for employment. This is consistent only with the view that the status of employer and employee had never arisen up to the happening of the disaster, so far as Hicks is concerned.

Consequently, mere boarding the launch could not effect an employment. The petitioner derives no help in this direction from the workmen's compensation statutes, which customarily enact that where in making his claim under that statute, the claimant asserts he is a workman, he is aided by a statutory presumption which calls for proof from the employer to rebut it. The claimant here does not stand upon any such statute.

The burden was on the petitioner to prove that Hicks was its employee.

The petitioner urges at page 58 of its brief and again at page vii of Appendix C to its brief in No. 430 that the claimant was under the burden of showing that he was not an employee, and it is asserted that Judge Hazel so ruled. This appears to be a misconception on its part. The same judge entertained a contrary view on the trial (R. 1927-1928), where he said:

> "I do not think it makes any difference. I do not think the question of liability depends upon any compensation act of any state."

Hazel, D. J., in his opinion, never mentioned or discussed the question of upon what litigant the burden rested, in respect to such issue (opinion at R. 140), and in fact declined to pass upon the question of the possible applicability of the New Jersey Compensation Act until after the report of a commissioner. This task chanced to devolve upon Judge Patterson, and not Judge Hazel.

On principle it seems to be clear that the petitioner has the burden in this regard. Hicks was an invitee and clearly not a trespasser. His administratrix would be entitled in any event to maintain an action for injuries causing his death in the common-law courts without alleging or proving that decedent was not an employee. If the petitioner counted upon the fact of employment to oust the court of jurisdiction, it would have the burden of establishing the relationship and must abide the result of the determination of the trier of the fact on that issue. How valuable that right is, and how important the consequences to the claimant, is emphasized by the importance accorded that issue at all stages of the litigation in the federal courts, and in the petitioner's brief to this court in No. 430. It became a serious issue, and we submit that the concurrent findings of both courts below in claimant's favor should not be disturbed.

If we are correct in asserting that in the common-law suits, the burden in this issue would have rested upon the petitioner, it is not perceived how the burden would shift by transferring the forum to the admiralty court through the instrumentality of the limitation proceeding. In new or doubtful cases, it is the policy of the law to impose the burden, so far as possible, with regard to the capabilities of the parties for making proof. The fact that Hicks' lips are sealed should be a very persuasive circumstance, if there were no other reason, to cast this burden upon the petitioner.

The petitioner makes much of the fact (Brief pp. 3-4) that at the outset of the trial of the limitation proceeding its counsel offered to lift the injunction and to permit claimants to pursue a remedy in New Jersey compensation. The offer was conditioned upon *all* claimants accepting it (R. 289, fol. 867). Besides, there was no offer at any time made to permit any common-law tribunal to pass upon the very important and serious issue of employment *vel non*.

As above pointed out, no reliable guidance is derivable from the considerable group of decisions cited by the petitioner's brief construing the workmen's compensation

statutes of New Jersey and of other states, as to when there is sufficient "employment" to bring a claimant under the protecting aegis of such a statute. In nearly every such case, the claimant is standing upon and asserting rights under such statute, and the employer or his insurance carrier disputes his right to do so. Even if no statutory presumption operates in favor of the alleged workman, the tribunal, board or commission is impressed with the idea that the remedy it administers is a beneficent one, and the claimant is generally not represented by counsel. The question coming before a court of review is not—"Are we obliged to sustain a jurisdiction thus asserted?" Rather it is—"Can we legitimately do so?" Quite often, the balance swings in favor of the claimant by reason of the legislature having enacted that "such construction shall be given to the statute as will effect the purposes thereof," etc.

Clemens Horst Co. v. *Hartford Accident and Indemnity Co.*, 27 Fed. (2nd) 42, is relied on by the petitioner as being a convincing authority that Hicks and the "Saturday" men became employees. Such, we submit, is not the effect of that opinion. The case was concerned merely with construing the language of an indemnity insurance policy, i. e., the construction of a written contract. Ambiguous terms were (as usual) construed most strongly against the company, which drew the contract. It was important to determine the extent of coverage—whether it was intended to cover the workers only when they had arrived at the hopyards, or did the risk attach as soon as they boarded the employer's truck? The court adopted the latter alternative, considering evidently that the risk of injury at the hopyards was negligible, and that the parties must have intended it to attach sooner, else the whole transaction was meaningless, and the insured was paying his premiums for nothing. It was concluded that coverage was intended—

> "* * * the risks and hazards of which were obviously mainly confined to the hauling of operatives

between railroad stations and the hopyards" (27 Fed. [2nd] 42, 43).

The court obviously is only interested in the word "employee" in such sense

"as it is used in the policy" (27 Fed. 42, 43),

and so in that light we are to understand the following passage from the opinion, in which the court distinguishes a number of cases called to its attention:

> "But in those cases the plaintiffs were held not to be the employees for the reason that no contract of employment had been made with them, and they were but applicants for employment at the time when they sustained personal injuries. It is to be observed, also, that decision in those cases depended upon construction of provisions of the Workmen's Compensation Act of Oregon (Laws 1913, p. 188), while in the case at bar the court is called upon to construe the provisions of a contract of accident insurance, and to determine the scope of the protection intended to be afforded thereby."

POINT IV.

The contract of employment, if any, was maritime and the admiralty court has exclusive jurisdiction.

This point has been so capably treated by our colleagues, Messrs. Axtell & Robinson, at pages 35 to 38 in their brief filed in No. 430 in behalf of claimants-respondents "May A. Amlaw, as administratrix, and 22 others," the argument being fortified by excerpts from the printed record, that we regard it as unnecessary to reproduce the identical matter in our brief.

POINT V.

In this case, the lower courts have erred in according extraterritorial potency to the New Jersey Workmen's Compensation Statute, which has erroneously been permitted to supplant the Maritime Law over (1) a maritime tort, (2) committed upon waters extraterritorial to any sovereignty of New Jersey.

It has been concurrently held below that Hicks as a "Saturday" man, when drowned, was not an employee, or, if he was such, he was a maritime employee who died in an accident occurring upon navigable waters.

We are, therefore, not aggrieved by the holding below that regular employees in this case have no standing in the admiralty court, but are to be remitted to New Jersey Workmen's Compensation. Because the petitioner is pressing for a reversal upon both the grounds above stated, we deem it appropriate to present our arguments that in any event the Hicks claim is entitled to remain in the admiralty court. We respectfully submit that any rule which would require the claims of Hicks and the "Saturday" men, *qua* employees, to be relegated to New Jersey Workmen's Compensation, would amount to an unwarranted abdication by the admiralty court of its functions as a court. If the doctrine of the lower courts in this particular respect were to be upheld as sound by this court, then very far-reaching and harmful consequences would follow, as we will attempt to point out.

We submit that the lower courts were mistaken in the view they took that, despite the occurrence of this accident aboard a vessel on navigable waters, an employee of the owner of the vessel is disentitled to relief in admiralty, unless when injured or killed he happened to be engaged in a maritime service.

The courts below have reached this result by reasoning that the mere acceptance of employment made a contract implied in law under the New Jersey Workmen's Compensation statute, which would override whatever effect the Maritime Law would put upon the negligent act as

being a maritime tort. It was held that such contract would necessarily oust any other court or forum, including the admiralty court, so that the New Jersey compensation statute would furnish the exclusive remedy, in spite of the tort having occurred on navigable waters under the sovereignty of the State of New York.

This result was in part reached by a consideration of the New York case of *Barnhart* v. *Amer. Concrete Steel Co.*, 227 N. Y. 531, which case related to a tort occurring upon land within the confines of *New York* State, and it was held that because by the laws of *New Jersey*, under which the decedent was employed, he or his dependents would be restricted to an award in workmen's compensation, then the courts of New York would lend his administrator no aid in a statutory suit for death by wrongful act (grounded upon the New York statute), even though the wrongful act and the death both occurred in New York State.

The *Barnhart* case, because the matter actually decided involved no denial of full faith and credit to a New Jersey statute, but merely denied a remedy under a New York statute, probably raised no federal question to be reviewed by this court. The decision unquestionably required the suitor to resort to the New Jersey forum, for a tort which happened in New York. The effect was not different than it would have been had the New Jersey statute enacted that the remedy for the wrong happening abroad could be had nowhere except in the New Jersey forum, but in that event this court would unquestionably have disagreed.

Tennessee Coal, Iron & R. R. Co. v. *George*, 233 U. S. 354.

Atchison, T. & S. F. R. Co. v. *Sowers*, 213 U. S. 55, 70.

Kenney v. *Supreme Lodge*, 252 U. S. 411.

This court has always insisted that upon suits in the forum (federal courts) to recover for foreign torts that the rule of *lex loci delicti* governs.

Western Union Telegraph Co. v. *Brown,* 234 U. S. 542.
Slater v. *Mexican Nat'l R. R.,* 194 U. S. 120.
Workman v. *New York City,* 179 U. S. 552.

The only apparent exception is in proceedings to obtain limitation of liability in the forum in the case of a foreign vessel, where the law of the forum takes precedence over the law of the "flag," this for reasons of necessity.

Re Titanic, 233 U. S. 718.

We know of no case, however, where the federal courts have considered themselves obliged to hold that the Workmen's Compensation statute of State A must furnish the sole and exclusive remedy over a maritime tort which happened on the navigable waters of State B. The holding to that effect below in the case at bar seems to be a clear departure from the settled rules laid down by this court.

In none of the cases which we have found following the *Jensen* case has this court been called upon to decide the question of *extraterritorial* potency of the Workmen's Compensation Law of any state. So far as we can discover, the federal courts have in such analogous cases as have come before them always applied the conventional rule of the place where the tort itself happened as, *e. g., D., L. & W. R. R.* v. *Peck,* 255 Fed. 261, 264 (C. C. A., 2nd, 1918).

The general maritime law has always been regarded by this court as the foundation of the recovery, supplemented in certain cases, to be sure, by the statutes of a particular state.

This appears to be the rule in *The Hamilton,* 207 U. S. 398, where the Delaware death statute was held to provide a vehicle for recovery, mainly because the general maritime law at the date of the decision contained no Lord Campbell's Act, which allowed a recovery for death upon the high seas by wrongful act. The court applied the doctrine of the "flag," and the owner being a Delaware

corporation, and the vessel registered in Delaware, permitted a recovery, emphasizing the necessity of so holding in order to provide a remedy for the wrong by observing (p. 403) that the act was done upon the high seas,

> "outside the territory of the state, it is true, *but within no other territorial jurisdiction.*" (Italics ours.)

Upon the trial of an action in the New York Supreme Court for negligently causing death while the decedent was working in the repair of a vessel, it was held error for the court in charging the jury to have adverted to the statutory requirements enacted by the New York legislature in respect to scaffolding and safety appliances, because to allow such statute to be a standard of maritime negligence would impair the uniformity of the admiralty law.

Robins Dry Dock v. *Dahl,* 266 U. S. 449.

We submit the case just cited is consistent only with the view that in death cases the foundation of right in the general admiralty law, no matter whether recovery is sought directly in the admiralty court, or in a state court of common law, in which the action is brought pursuant to the "saving" clause of the Judiciary Act of 1789.

U. S. Code, Tit. 28, Secs. 41(3), 371(3).
Knickerbocker Ice Co. v. *Stewart,* 253 U. S. 149, 159.

We respectfully submit that if all the facts in the present disaster had been the same, except that it had happened in San Francisco Harbor instead of happening in New York Harbor, and if, for example, the petitioner had taken the position that the hiring of these men was accomplished by its having mailed from New Jersey written acceptances of employment to each of these men, and if further no man had affirmatively expressed his election not to be bound by the New Jersey law, then it would

logically follow from the doctrine below that the New Jersey Workmen's Compensation would be the sole forum which could administer any remedy whatsoever to their dependents or administrators. In such case the federal courts would be closed to the claimant, even in the locality where the tort happened. Such a result would be the logical consequence of the view which both the District and Circuit Court of Appeals have taken in the case at bar. Any such result would be both harsh and intolerable, and a departure from the decisions of this court, because the necessary effect is to accord extraterritorial potency of the statutes of New Jersey over a tort happening in a foreign jurisdiction.

Whatever power the New Jersey courts might have within their own territorial confines to give relief to a litigant who stands upon the New Jersey Workmen's Compensation statute is not material to this controversy. Nevertheless, the federal court sitting in admiralty is not obliged in the case of a maritime tort to adopt the "New Jersey rule," and to restrict the remedy of a litigant who does not stand upon the New Jersey Workmen's Compensation Act, and to rule that that act is nevertheless exclusive where the tort is both maritime and extraterritorial to New Jersey.

This court has many times emphasized and adopted as a governing principle in suits upon foreign torts that tort liability in general is determined by the law of the state within whose territorial jurisdiction the tortious act occurred.

This court said, in *Western Union Telegraph Co.* v. *Brown*, 234 U. S. 542, 547:

> "Whatever variations of opinion and practice there may have been, it is established as the law of this court that when a person recovers in one jurisdiction for a tort committed in another he does so on the ground of an obligation incurred at the place of the tort that accompanies the person of the defendant elsewhere, and that is not only

the ground but the measure of the maximum recovery. Slater v. Mexican National R. R. Co., 194 U. S. 120, 126; Cuba R. R. Co. v. Crosby, 222 U. S. 473, 478, 480. (A limitation of liability may stand on different grounds. The Titanic, 233 U. S. 718.)"

The court went on to say (p. 547):

"* * * and when a state attempts in this manner to affect conduct outside its jurisdiction or the consequences of such conduct, and to infringe upon the power of the United States, it must fail. The principle would be illustrated by supposing a direct clash between the state and federal statutes, but it is the same whenever the state undertakes to go beyond its jurisdiction into territory where the United States has exclusive control (citing cases)."

In *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 126, dealing with the enforcement in a Texas court of a right of action for wrongful death which arose in the Republic of Mexico, it was said:

"But when such a liability is enforced in a jurisdiction foreign to the place of the wrongful act, obviously that does not mean that the act in any degree is subject to the *lex fori*, with regard to either its quality or its consequences. On the other hand, it equally little means that the law of the place of the act is operative outside of its own territory. The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be enforced wherever the person may be found (citing cases). But as the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation, *Smith* v. *Condry*, 1 How. 28, but equally determines its extent."

But the courts below have attempted to skirt the difficulty in the case at bar by arguing that the parties had in effect agreed in advance of any injury that no injurious

act, not even that which occurred upon navigable waters, should be regarded as a tort.

It would seem to follow as a necessary consequence of this argument that no matter what the admiralty law thought about the transaction, the parties had nevertheless made a binding contract to oust the admiralty court of jurisdiction. We do not see how this argument can prevail, unless the rule of *Southern Pacific* v. *Jensen*, 244 U. S. 205, is to be thrown into the discard.

In the case at bar, there is no claim by either the petitioner, or the courts below, that the *New York* Workmen's Compensation statute governs the case. It was assumed by the petitioner, and by the courts below, that the *New Jersey* Workmen's Compensation statute alone governs the status of those who are regular employees.

Every reason of uniformity and harmony of the admiralty law sought to be attained by the rule of the *Jensen* case is violated by giving paramount importance to the *New Jersey* Workmen's Compensation statute in the case at bar.

The disaster happened upon a vessel owned by a New York corporation, and which though plying between New York and New Jersey, was registered under federal laws at the Port of New York. The accident happened upon navigable waters, which, excluding for a moment the paramount importance of the admiralty law, were waters outside the sovereignty of New Jersey, but clearly within the sovereignty of the State of New York.

> Act of June 28, 1834, Chap. 126, 4 Stat. 708.
> *Central R. R. Co. of N. J.* v. *Jersey City*, 209 U. S. 473.

The tort would seem to be a maritime tort pure and simple, and, even if an action for wrongful death were brought in the New York common-law courts under the saving clause of the Judiciary Act, that court would be obliged in granting a recovery to do so under the settled rules of the admiralty law.

We believe that the decision in *Barnhart* v. *American Steel Co.*, 227 N. Y. 531, would have no controlling force under the facts of the case at bar, because that decision deals with a tort occurring upon the land and not upon navigable waters.

In the celebrated case of *Workman* v. *New York City, Mayor, etc.*, 179 U. S. 552, 557, 558, this court dealt with the case of a collision upon navigable waters between two New York City docks. A fire boat of the City of New York negligently collided with another vessel, which brought a libel in admiralty. It was conceded that the New York rule would exempt the fire boat and its owner, the city, from liability on the theory that at the time of the collision it was engaged in a governmental function. However, this court emphasized the paramount importance of the admiralty law and ruled that this court must preserve intact the characteristic features of the maritime law, no matter how severely it might impinge upon the local rule. This court said, in the course of its opinion, per Mr. Justice White, in that case:

> "In examining the first question, that is, whether the local law of New York must prevail, though in conflict with the maritime law, it must be borne in mind that the issue is not—as was the case in *Detroit* v. *Osborne*, (1890) 135 U. S. 492—whether the local law governs as to a controversy arising in the courts of common law or of equity of the United States, but does the local law, if in conflict with the maritime law, control a court of admiralty of the United States in the administration of maritime rights and duties, although judicial power with respect to such subjects has been expressly conferred by the Constitution (art. III, sec. 2) upon the courts of the United States.
>
> The proposition then which we must first consider may be thus stated: Although by the maritime law the duty rests upon courts of admiralty to afford redress for every injury to person or property where the subject-matter is within the cognizance of such courts and when the wrongdoer is

amenable to process, nevertheless the admiralty courts must deny all relief whenever redress for a wrong would not be afforded by the local law of a particular State or the course of decisions therein. And this, not because, by the rule prevailing in the State, the wrongdoer is not generally responsible and usually subject to process of courts of justice, but because in the commission of a particular act causing direct injury to a person or property it is considered, by the local decisions, that the wrongdoer is endowed with all the attributes of sovereignty, and therefore as to injuries by it done to others in the assumed sovereign character, courts are unable to administer justice by affording redress for the wrong inflicted.

The practical destruction of a uniform maritime law which must arise from this premise, is made manifest when it is considered that if it be true that the principles of the general maritime law giving relief for every character of maritime tort where the wrongdoer is subject to the jurisdiction of admiralty courts, can be overthrown by conflicting decisions of state courts, it would follow that there would be no general maritime law for the redress of wrongs, as such law would be necessarily one thing in one State and one in another; one thing in one port of the United States and a different thing in some other port. As the power to change state laws or state decisions rests with the state authorities by which such laws are enacted or decisions rendered, it would come to pass that the maritime law affording relief for wrongs done, instead of being general and ever abiding, would be purely local—would be one thing to-day and another thing to-morrow. That the confusion to result would amount to the abrogation of a uniform maritime law is at once patent."

To make the constitutional grant of admiralty jurisdiction effective, this court must, and does, exercise an independent judgment in deciding as to the validity, operation and construction of a workmen's compensation statute, or a decision thereunder which impinges on the maritime jurisdiction, or which professes or appears to have the necessary effect of attempting to oust the admiralty courts of jurisdiction in a given case.

While Congress has no right to legislate in respect to matters which are properly within the domain of the states, yet the states have no right that their statutes or decisions shall prevail over the general admiralty law.

Southern Pacific Co. v. *Jensen,* 244 U. S. 205.
Workman v. *New York City,* 179 U. S. 552.

In the case at bar, by stressing unduly the alleged contractual element in the employment and allowing it to override the admiralty law, the admiralty court has in effect abdicated its functions as a court in favor of the State Compensation Commission.

It has been held that each individual accepting employment, in addition to waiving his own rights to sue in tort in case injury happened to him, has also effectually waived the rights which his administrator as trustee for the dependents named in the wrongful-death-statute would have to recover for negligent injury causing his death. This holding has been in accordance with the rule of the *Barnhart* case in New York, above cited (227 N. Y. 531).

Before the *Barnhart* case was decided, an admiralty case arose in the Second Circuit, in which a contrary view was reached under similar circumstances, and this court refused to allow *certiorari* under such circumstances that the decision has the effect of a precedent.

We refer to *Cornell Steamboat Co.* v. *Fallon,* 179 Fed. 293, certiorari denied, 216 U. S. 623.

The facts were that a fireman on a tug was negligently killed in a maritime collision. His administrator brought an action at law *in personam* in the United States District Court, Southern District of New York, and obtained a substantial recovery. Error was predicated upon the view adopted by the trial judge, who had ruled that the administratrix was suing upon a statutory cause of action for injuries causing death; that she was in effect the trustee for those next of kin entitled to share in recovery; that the administratrix in her recovery was not restricted to the measure of damages which the seaman himself at that

time would have been limited to under the rule of *The Osceola,* 189 U. S. 158, viz.: wages and maintenance and care until his recovery, to the end of the voyage, or so long as he had a right to wages, etc.

It was particularly urged upon the Circuit Court of Appeals, and to this court, upon application for certiorari, that there was error in allowing to the administratrix of the seaman a standard of recovery differing radically in kind from that which the seaman, had he lived, could recover. This court refused a review of the case, although there was urged upon it the following passage in the opinion of the Circuit Court of Appeals, 179 Fed. 293, 295 (which was the subject of a vigorous dissent in that court):

> "Her cause of action is statutory and *entirely different from his had he lived,* viz.: compensation for the pecuniary injuries resulting from his death to the designated persons." (Italics ours.)

While the *Barnhart* case in New York is apparently inconsistent with the principle of decision in the admiralty case to which we have just adverted, and while usually deferring to the interpretation placed by the highest tribunal of the state on the state statute, this court will, where that statute has previously been interpreted by the federal courts in connection with the admiralty or other federal jurisdiction, adhere to the independent federal interpretation of the statute.

> *Tidal Oil Co.* v. *Flanagan,* 263 U. S. 444.
> *Kuhn* v. *Fairmont Coal Co.,* 215 U. S. 349.

Where attempts have been made by legislation, decision or contract to weaken the force of federal legislation or regulation in a sphere of activity exclusively occupied by the Federal Government, this court has dealt with them firmly.

In *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U. S. 33, at 41, it is said:

> "Congress having entered this field of regulation, it follows from the paramount character of its authority that state regulation of the subject matter is excluded."

At page 42, *id.*, it is said:

> "We are therefore brought to the conclusion that the right of private action by an employee injured while engaged in duties unconnected with interstate commerce, but injured through a defect in a safety appliance required by the act of Congress to be made secure, has so intimate a relation to the operation of the Act as a regulation of commerce between the States that it is within the constitutional grant of authority over that subject."

In *Philadelphia, Baltimore & Washington R. R.* v. *Schubert*, 224 U. S. 603, at 614, this court held void an agreement between a railroad and its employee whereby it was attempted to contract away the latter's right to sue his employer in the event of negligent injury, and to restrict the latter to a relief fund.

There can be no doubt that the New Jersey statute can have no extraterritorial validity so as to require that the federal court sitting in admiralty must declare that a maritime tort ceases to be a maritime tort if the parties have agreed in advance that it shall not be regarded as such.

There can be no doubt that the *Linseed King* disaster involved a maritime tort for which a maritime remedy is given. The decisions of this court do not require that Hicks must have been actually engaged in a maritime occupation at the precise moment of his injury or death. The admiralty jurisdiction is satisfied if at that time he is injured by the fault of the ship, or its owners, while on board the ship upon navigable waters.

In *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, at 61, a steamship engaged in the transatlantic trade was moored at the dock and the work of loading it had been taken over by a stevedoring company. A beam holding up part of the hatch cover was negligently allowed to fall into the hole, injuring a seaman, who brought a libel for personal injuries. In this court, appellant's counsel argued that locality was not the exclusive test of tort jurisdiction of an admiralty court. The nature of the argument made in that direction is summed up in the following passage from the court's opinion (p. 61):

> "Even if it be assumed that the requirement as to locality in tort cases, while indispensable, is not necessarily exclusive, still in the present case the wrong which was the subject of the suit was, we think, of a maritime nature, and hence the District Court, from any point of view, had jurisdiction. *The petitioner contends that a maritime tort is one arising out of an injury to a ship, caused by the negligence of a ship or a person, or out of an injury to a person by the negligence of a ship; that there must either be an injury to a ship or an injury by the negligence of the ship, including therein the negligence of her owners or mariners; and that, as there was no negligence of the ship in the present case, the tort was not maritime. This view we deem to be altogether too narrow.*" (Italics ours.)

From the passage just cited, it is clear that the court based its decision upon the fact that the libellant was engaged in the performance of a maritime service when injured, for the sole reason that the fault was that of the stevedoring company and was not the fault of the ship or its owners.

In any event, it would seem that the facts clearly bring the case at bar within the rule contended for in the above passage from the *Imbrovek* case, which even the appellant's counsel in that case conceded to be well established. Mr. Justice Hughes and this court did not say it was an incorrect statement of the rule, but merely characterized it as "altogether too narrow."

In *Industrial Commission* v. *Nordenholt*, 259 U. S. 263, 273, this court said:

> "The doctrine that locality is the *exclusive* test of admiralty jurisdiction in matters of tort had been questioned in the *Imbrovek* case, and to show beyond any doubt that the maritime rules applied as to Jensen's injuries, we used the quoted language. Later in Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, we said, 'The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the transaction and in tort matters upon the locality, has been so frequently asserted by this Court that it must now be treated as settled.'"

POINT VI.

Having brought all of the claimants into concourse in the limitation proceeding, the petitioner must remain in the admiralty court because no claimant in this case is asserting a right to recover under the Workmen's Compensation statute of any state.

It would seem that every argument based upon judicial economy of time and saving of expense would dictate that one forum should pass upon all phases of this controversy if such is possible.

In *Hartford Accident & Indemnity Co.* v. *Southern Pacific SS. Co.*, 273 U. S. 207, 216, this court held that after the denial of limitation the admiralty court may nevertheless proceed to adjudicate upon all claims in the proceeding, whether originally cognizable in admiralty or not.

There is no reason why Workmen's Compensation claims cannot be limited against in a proceeding in admiralty, although in the instant case the District Court held otherwise (R. 189, Opinion of Patterson, J.).

In *Matter of East River Towing Co. for Limitation,* 266 U. S. 355, it was held after elaborate briefs and argument that the tort cause of action conferred by Section 33 of the Merchant Marine Act of June 5, 1920, Chapter 250, 41 Stat. 988, could be limited against in admiralty.

One of the principal arguments urged before this court against reaching that result was the supposition that Congress in enacting Section 33 intended to give effect to, as Mr. Justice Holmes expresses it at page 365 of the court's opinion,

> "* * * the growing consideration for the claims of labor."

Whence it was argued that Section 33 impliedly repealed the limitation of liability statute so far as affected tort claims under Section 33.

But this court repudiated that argument, saying at 266 U. S., page 367:

> "No sufficient reason is offered for the extraordinary preference over other claims that would be given to seamen were the decree of the District Court* sustained. When a preference in respect of seamen's wages was intended it was expressed. Act of June 26, 1884, C. 121, § 18, 23 Stat. 57."

It would seem that Workmen's Compensation awards can be limited against in like manner in the admiralty, for conceivably the happening of a wholesale disaster might bankrupt a shipowner if he were compelled in spite of obtaining a limitation of liability to pay a large amount in satisfaction of Workmen's Compensation claims under the laws of any state. Thus the evident design of Congress to foster shipping might be thwarted.

In *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, 218, this court found a repugnance between the policy of the limitation of liability statutes and the State Workmen's Compensation statute of New York.

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* i.e., lifting the injunction against a pending tort suit.

(a) The limitation proceeding is in effect a removal of all claims to the admiralty court. A jurisdiction thus rightfully taken should be followed up by a determination on the merits in that forum.

At least, where the vessel owner has gone so far as to commence and prosecute vigorously a limitation of liability proceeding, he should not, after limitation is denied, be able to have a large group of men like these "Saturday" men, about whose status as "employees" there was at all times grave doubt, perfunctorily remitted to the Workmen's Compensation tribunal. Especially is this so where, as here, both the District and Circuit Courts have found as a fact that they were not employees, but merely applicants for employment.

The petitioner on the limitation proceeding must take the burdens of that statute along with its benefits.

In *The Germanic*, 196 U. S. 589, at 598, which was the case of a libel by cargo owners for damage to cargo, the claimant shipowner had unsuccessfully interposed the provisions of the Harter Act (Act of Feb. 13, 1893, Chap. 105, 27 Stat. 445; Code, Title 46, Secs. 190-195). On this court holding that statute to be no defense, the vessel owner attempted to shift its ground of defense and to fall back upon provisions contained in the bills of lading to cut down its liability. This court refused to allow it to do so, saying at page 598 of its opinion:

> "The claimant sets up the act and relies upon it. Under the cases it must take the burdens with the benefits, and no discussion of the terms of the bills of lading, if they might lead to a greater limitation of liability, is necessary. Knott v. Botany Mills, 179 U. S. 69; The Kensington, 183 U. S. 263, 269."

The estoppel held to have resulted in the foregoing case should likewise be applied in the case at bar so as to prevent the petitioner, failing in its attempt to limit its liability under the statute (Act of March 3, 1851; 9 Stat.

§35; R. S., Sec. 4283; U. S. C., Title 46, Sec. 18[illegible] amended), from urging in this court that it can [illegible] shelter itself behind the New Jersey Workmen's Co[illegible] sation statute in a case thus brought into the admi[illegible] jurisdiction by the commencement and prosecution of [illegible] limitation of liability proceeding.

POINT IN CONCLUSION.

The decree of the Circuit Court of Appeals [illegible] be affirmed; the award in the District Court in fa[illegible] of claimant Hilda Hicks, as administratrix, affir[illegible] by the Circuit Court of Appeals, should be affirmed [illegible] this honorable court, with interest and cost[illegible]

February , 1932, New York City.

Respectfully submitted,

WALTER R. KUHN,
GEORGE W. RILEY,
Counsel for Claimant-Respondent Hi[illegible]
Hicks, as Administratrix.